

9-1-1 Advisory Council

Administrative Rule Process Summary
11/16/2017

Legislative Mandate

The purpose of administrative rulemaking and of the Administrative Rules of Montana (ARM) is to implement State statute. State executive branch agencies have no authority to make rules, unless the Legislature has granted the agency rulemaking authority. The rulemaking authority is limited in scope to the ability to make rules concerning the statutes being implemented by the rule. An agency cannot promulgate rules unless the agency has the authority to write rules and the proposed rules implement a statute passed by the Legislature.¹

In this case, both rulemaking authority and the statutes being implemented can be traced directly to House Bill 61. The Department's rulemaking authority is found in Section 4 (pages 4-5) of the bill.

Rulemaking Authority:

Section 4. Rulemaking authority. (1) Before July 1, 2018, the department shall adopt rules to implement the provisions of this chapter. The rules must include but are not limited to:

- (a) distribution procedures for funding authorized in [section 7(1)];
- (b) procedures for grant funding authorized in [section 8]. The rules for grant funding must include but are not limited to:
 - (i) eligibility requirements for entities applying for grants;
 - (ii) criteria for awarding grants; and
 - (iii) reporting procedures for grant recipients;
- (c) postdisbursement activities by the department to monitor the use of funding by entities, including:
 - (i) reporting requirements; and
 - (ii) procedures for repayment of funds expended on activities determined not to meet eligibility requirements.

(2) Before January 1, 2019, the department shall adopt rules including but not limited to:

- (a) technology standards, based on industry standards and a statewide 9-1-1 plan pursuant to [section 13], to ensure that public safety answering points meet minimum 9-1-1 services levels; and
- (b) baseline next-generation 9-1-1 principles to facilitate the appropriate deployment of baseline next-generation 9-1-1.

(3) Before January 1, 2022, the department shall adopt rules for the allocation and distribution of funds in the account provided for in [section 6(2)(a)] in accordance with [section 7(2) and (3)] to local government entities that host public safety answering points.

¹ Agency rulemaking authority is a matter of legislative grace, and to the extent the Legislature has not clearly and specifically vested the agencies with such power, the Legislature remains the sole lawmaking entity. *Fallon County v. State*, 2009 MT 454, ¶ 29, 354 Mont. 347, 357, 223 P.3d 886, 892.

(a) The rules adopted for allocation must be based on the official final decennial census figures and must ensure that each local government entity that hosts a public safety answering point receives funding. The allocation must account for:

- (i) historic allocations provided to a local government entity that hosts a public safety answering point;
- (ii) the population of counties, cities, or other government entities served by the public safety answering point;
- (iii) population trends; and
- (iv) other factors determined by the department, in consultation with the 9-1-1 advisory council provided for in [section 1], critical to the funding allocation.

(b) The department's allocation may not distribute funds in a manner that discourages public safety answering points from consolidating or combining.

(4) The department shall adopt rules in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4, to implement the provisions of this section.

Statutes Implemented

The statutes implemented comprise the remainder of H.B. 61, including both the sections that create new statutes and the sections that amend existing law.

Roles

Several government entities will have a role in this rulemaking process.

9-1-1 Advisory Council (Advisory Council)

- Advises the Department on distribution of 9-1-1 funds and development of statewide 9-1-1 plan
- Advises the Department on rulemaking

Administrative Rule Subcommittee of the 9-1-1 Advisory Council (Subcommittee)

- Makes recommendations regarding administrative rules to the 9-1-1 Advisory Council

Department of Administration (Department)

- Provides staffing to the Advisory Council and Subcommittee to perform administrative tasks they define
- Ultimately responsible for proposing and adopting administrative rules

Secretary of State

- Ensure Proposal and Adoption Notices are properly formatted
- Publish the Montana Administrative Register and Administrative Rules of Montana

Administrative Rulemaking Process

Pre-Proposal

The Subcommittee will prepare a set of recommended rulemaking changes, which may include the adoption of new rules and the amendment or repeal of existing rules. The Subcommittee's recommendations will be delivered to the Advisory Council, which will decide whether to accept them, reject them, or make its own recommendations. The recommendations approved by the Advisory Council will then be presented to the Department, and the Department will initiate the rulemaking process.

Proposal

The Department will prepare a Notice of Public Hearing on Proposed Adoption, Amendment, or Repeal (Proposal Notice). The Proposal Notice identifies the specific rule changes being proposed, describes the reason for the proposed changes, sets a date for public hearing, and explains how the public can participate in the hearing and provide public comment. The Department will submit the Proposal Notice to the Secretary of State, which will review it for compliance with the Montana Administrative Procedure Act and the Secretary of State's requirements. If the Proposal Notice satisfies these legal requirements, it will be published about 10 days later in the Montana Administrative Register (MAR) and sent to all interested parties. The Department will have six months from the date the Proposal Notice is published to complete the rulemaking process.

Post-Proposal

After the Proposal Notice has been issued, the Department will hold a hearing and collect public comment. During the rule hearing, members of the public will have an opportunity to submit oral and written comment regarding the proposed rule changes. In addition, members of the public will have an opportunity to provide comments until the comment deadline set in the Proposal Notice.

After the comment period closes, the Department will organize the comments by issue and topic, and seek input from the Advisory Council regarding any changes that should be made in response to public comment. The Department will prepare a response describing how the proposed rules should be amended, if at all, on the basis of public comment and addressing each of the issues and topics raised in the comments. Once again, this response will be submitted to the Secretary of State, and a Notice of Adoption will be published in the MAR.

The adopted and amended rules will become effective the day after the adoption notice is published.

Notes

- It can take anywhere from a minimum of about eight weeks up to as long as six months to complete the proposal and post-proposal processes necessary to adopt administrative rules.
- The Secretary of State's website offers additional resources.

<http://sos.mt.gov/arm#403804710-state-agency-toolbox>

<http://sos.mt.gov/arm#403804709-additional-resources>